

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 17,242
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying her approval for coverage of two items of durable medical equipment under the Medicaid program.

FINDING OF FACT

1. The petitioner is a forty-nine-year-old woman who over the past two years has become disabled by cervical dystonia and spasmodic torticollis. Her condition causes her head to jerk and her body to tremble. This involuntary movement distorts simple functions such as sitting with her head straight ahead and, in the words of her neurologist, "inhibits her from doing any kind or reasonable activity." She is particularly affected with regard to driving or sitting at a computer and her walking is affected as well. She has developed secondary depression and anxiety relating to this condition.

2. In May of 2001, the petitioner's physician requested approval of two items of equipment which he certified were necessary to her course of treatment. The first is a seating system which supports the torso, head and spine by holding it steady and the second is a cervical pillow which holds the head steady at night to prevent shaking. The physician stated on the request forms that the items were requested to "support neck, head and back to make driving easier/possible, ensure sitting comfort."

3. The petitioner's request was denied on May 28, 2001 because the two supports were considered a "non-covered item for comfort and not primarily medical in nature."

4. The petitioner appealed that denial on August 7, 2001. The petitioner was advised during the hearing that she needed to get a letter from her physician responding to the Department's belief that the request was strictly for comfort and convenience. The petitioner provided a letter from her physician dated December 21 which contained the following information:

The durable medical equipment which [petitioner] has requested is medically necessary. These devices are to support her neck and back, as well as to aid her in better function. She has received alternative therapies, including the botulinum toxin, which have not given her significant improvement. She continues to follow up with her neurologist, Dr. Tom Ward, at Dartmouth-Hitchcock

Medical Center. It is my opinion that these objects are medically necessary.

5. Following this letter, PATH still declined to cover the two support devices and provided both an oral and written rebuttal from PATH's medical director saying that based upon his review of the situation including phone conversations with her physician he did not see a "clinically compelling reason to grant this request" saying that the Department has only paid for such supportive devices where there appeared to be a possible danger to the client when riding in the car.¹

6. The petitioner testified credibly that it is difficult for her to stay still and that she suffers tremors and shakes all day and all night. She has tried every drug therapy recommended to her but nothing has stopped the shaking or the accompanying pain. She is unable to sleep at night because of the constant shaking and unable to perform many functions during the day that require her to hold her head straight or coordinate her body. She has been told by her physician that the devices he requested would support her body and prevent the uncontrolled shaking.

¹ The letter from the medical director also contained recitations of remarks supposedly made to him by the petitioner's physician. Those statements are not consistent with other statements made in writing by the physician and are inadmissible in this matter to prove the truth of those statements because they are pure hearsay.

7. The petitioner was given until the middle of March to provide information to the Department documenting her degree of pain but the petitioner did not provide anything further. She indicated at the final hearing (in February) that she felt the matter had gone on too long and did not have the energy to keep providing further information.

8. Based upon the above testimony, it is found that the petitioner is in need of the requested devices to support the muscles of her head, spine and body which are malfunctioning due to a progressive neurological disease and that such devices are not just for comfort or convenience but will improve her ability to function both by allowing her to sleep and by holding her body in a correct position.

ORDER

The decision of the Department is reversed.

REASON

Medicaid regulations adopted by PATH provide for the coverage of "prosthetic devices" to beneficiaries. M843.1. A "prosthetic device" is defined as "a replacement, corrective or supportive device to: 1) artificially replace a missing portion of the body; 2) prevent or correct physical deformity

or malfunction; or 3) support a weak or deformed portion of the body." M843.1.

The items prescribed by the petitioner's physician are clearly "supportive devices" which have as their aim the "support of a weak or deformed portion of the body." The primary purpose of these devices as described by the petitioner's physician is to restore her ability to function in certain circumstances, not just to provide her with comfort. Thus, the requested devices fall squarely within the definition of "prosthetic devices."

The Department's regulations go on to say that "prosthetic devices" are covered if they are prescribed by a physician who is enrolled in Vermont Medicaid and are appropriate to the physical condition. M843.4. There is no dispute about either of these two requirements. The regulations categorize prosthetic items in three ways: as automatically pre-approved (M843.3), as requiring prior authorization review (M843.5) and as never covered (M843.6).

The regulations will never cover prosthetics that primarily serve to address social, recreational or other factors and do not directly address a medical need. M843.6. The petitioner's prosthetics do not fall into this excluded category because their purpose is to recover function. On the

other hand, the regulations specifically pre-approve coverage for "braces and trusses for the purpose of supporting a weak or malformed body member." M843.3. This is exactly what the petitioner has asked for. The petitioner described the device as one which would support her head, neck and body. As such it must be concluded that the petitioner's request most closely resembles items which are pre-approved for coverage. M843.3. See Fair Hearing No. 12,998.

Since the devices the petitioner requested are in the nature of braces or trusses to support her head, neck or body, it is not necessary to invoke the "prior approval" process. See M106. However, it must be noted that even if this were the appropriate process to use here, the petitioner has still shown that the devices are medically necessary because they are appropriate to treat her condition, are expected to result in a restoration of her functioning and that other reasonable alternatives, such as drugs, have failed. See. M106 and M107. The standards used by the Department to deny her--that there is no "compelling" reason, that she has not proved pain or that she is not in any "danger"--are not standards adopted anywhere in the regulations governing prior approval. See M106 and M107.

As the Department's decision is not consistent with its regulation which requires coverage of prosthetics used to support a weak body part, its decision must be reversed. 3 V.S.A. § 3091(d).

#